In the Matter of Merchant Mariner's Document No. Z-386625-D1
Issued to: JOHN M. ARNOLD

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

380

JOHN M. ARNOLD

IN THE MATTER OF
Merchant Mariner's Document No. Z-386625-D1
Issued to: JOHN M. ARNOLD
Merchant Mariner's Document No. Z-887976
Issued to: FRANK A. BEN
Certificate of Service No. C-60479
Issued to: DAVID M. BEYNON
Merchant Mariner's Document No. Z-885441
Issued to: CAROLYN M. BIQUELY
Merchant Mariner's Document No. Z-208292
Issued to: WINSTON BRAGG, JR.
Merchant Mariner's Document No. Z-171266
Issued to: JOHN BRENTON
Merchant Mariner's Document No. Z-165685-D1
Issued to: SANTIAGO CHAVEZ
Merchant Mariner's Document No. Z-61797-D1
Issued to: FRANK W. COOK
Merchant Mariner's Document No. Z-589540
Issued to: JAMES A. DALEY
Certificate of Service No. E-245387
Issued to: RAFAEL DELGADO
Merchant Mariner's Document No. Z-245985-D1
Issued to: DANIEL S. ELDRIDGE
Certificate of Service No. C-50641
Issued to: JUAN E. GUERRA
Merchant Mariner's Document No. Z-595309
Issued to: HASSAN ALL ISMAIL
Certificate of Service No. E-493939
Issued to: ROLAND KABIKINA
Merchant Mariner's Document No. Z-932979
Issued to: ROBERTO PEREZ
Certificate of Service No. E-735727
Issued to: ERNESTO RODRIGO
Certificate of Service No. E-432238
Issued to: HO KOEN SAN
Merchant Mariner's Document No. Z-763391
Issued to: ARTHUR SCHIFFMAN
Merchant Mariner's Document No. Z-752278
Issued to: DORIS SWADER
Merchant Mariner's Document No. Z-82159-D2
Issued to: THEODORE U. TUGGLE
Merchant Mariner's Document No. Z-182905
Issued to: MORLIN WILLS
Certificate of Service No. E-380600

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1 on behalf of twenty-three merchant mariners who were members of the crew of the American SS FLYING ARROW during the month of January, 1949, when the sailing of said vessel was delayed on two separate occasions due to difficulties with the crew. Upon the return of the FLYING ARROW to this country, these men were brought before a United States Coast Guard Examiner at New York City for hearing on charges of "misconduct" based upon specifications arising from the two incidents referred to above. Since the charge and specifications were identical in each case, it was stipulated by all parties concerned that a joint hearing would be held for the purpose of trial and that a separate order would be entered in each case. The hearing extended over a period from 25 March, 1949 to 10 June, 1949.

The original specifications supporting the charge of "misconduct" alleged in substance that each man while serving in his respective capacity on board the FLYING ARROW, under the authority of his duly issued merchant mariner's document or certificate of service, did, on or about 6 January, 1949, at Manila, Philippine Islands (first and second specifications), and on or about 17 February, 1949, at Singapore, Malaya (third and fourth specifications), cause the sailing of the FLYING ARROW to be delayed by refusing without reasonable cause to proceed to sea in said vessel (first and third specifications); and by conspiring, confederating and combining with other members of the crew to refuse without reasonable cause to proceed to sea in said vessel (second and fourth specification).

At the hearing, counsel entered his appearance on behalf of all twenty-three of the crew members charged. After motion of counsel to transfer the hearing to Philadelphia had been denied, the Examiner gave a full explanation of the nature of the proceedings, the rights to which the Appellants were entitled and the possible consequences of the hearing. Counsel for Appellants then waived the reading of the specifications to each person charged by stipulating that their pleas would be "not guilty" to each of the specifications. Counsel moved to dismiss the specifications due to lack of specificity. After argument on this point, the Examiner reserved decision on the motion.

Thereupon, the Investigating Officer made his opening statement in which he stated his intention to show that the twenty-three crew members were not justified in refusing to sail until their demands were met and certain members of the crew removed from the FLYING ARROW. Appellants' counsel waived the right to make an opening statement at this time.

A motion by the Investigating Officer to change the date in the third and fourth specifications was denied by the Examiner since this would be a change in substance which is not permitted under 46 C.F.R. 137.09-5(c). The third and fourth specifications were then dismissed without prejudice. Over objection by counsel two new specifications replacing the third and fourth specifications were served on Appellants. Since the only difference between the new specifications and the original third and fourth specifications was a change in the date of the alleged offenses from 17 February, 1949, to 17 January, 1949, the proceedings on the two sets of specifications were consolidated.

Counsel objected to the service of the new specifications on Appellants while they were attending a hearing under judicial process and the immediate consolidation of the proceedings was objected to on the ground that the persons charged should be given a reasonable opportunity to prepare their defense in accordance with 46 C.F.R. 137.05-15. The Examiner permitted the consolidation, effective as of the day following the date of the service of the new specifications, stating that such action did not seem to prejudice Appellants' cause in any manner because the questions of fact and law presented in the two sets of specifications are closely related. He also mentioned the necessity to expedite matters since it would probably be impossible to take the testimony of some witnesses in open hearing at a later date. The Examiner added that he would entertain any motion by counsel to allow him to prepare his defense if counsel so moved at the conclusion of the Investigating Officer's case.

When the hearing reconvened on the following day, the Investigating Officer supplemented his opening statement to provide for the two new specifications. Counsel waived the reading of the specifications and all formalities in connection with the service of the specifications except the question as to the legality of the service on Appellants. A plea of "not guilty" was then entered by counsel, on behalf of the seamen, to each of the specifications.

Following this, eight members of the crew and the Master of the FLYING ARROW testified as the Investigating Officer's witnesses. At the conclusion of this testimony, the Examiner admitted in evidence a Consular Report from the American Embassy at Manila, Philippines, and a similar report of the American Consulate General at Singapore. Both of these reports included explanatory enclosures which were received in evidence as part of the Consular Reports. Counsel objected to the admission of these reports and submitted a memorandum in support of his contentions. The Investigating Officer then rested his case in chief.

Counsel renewed his motion to dismiss the charges upon the ground that the charges are too vague and indefinite.

Counsel also moved to dismiss due to the failure of proof that Appellants refused to proceed to sea and the lack of evidence to prove that any such refusal was without reasonable cause. Memorandum briefs, followed by oral argument on these three points, were submitted by counsel and the Investigating Officer. The Examiner denied all three motions to dismiss ruling that the specifications sufficiently informed the persons charged of the nature of the alleged offenses thus giving them a fair opportunity to prepare their defense, that there was substantial evidence of a refusal to proceed to sea whether or not there was a refusal to obey a specific order to this effect; and that the Investigating Officer had sustained the rebuttable burden of proving that the refusal to proceed to sea was without reasonable cause.

Counsel then made his opening statement stating that facts would be set forth which proved the crew had reasonable grounds for apprehension about their safety so long as the Second Assistant Engineer remained on board the FLYING ARROW; and that when the Manila Consul removed the Second Assistant Engineer from the FLYING ARROW in the best interest of the vessel and the crew, the Appellants were later justified in acting on their belief that the Second Assistant Engineer constituted a menace to the crew.

In defense, counsel offered in evidence the testimony of twelve members of the crew of the FLYING ARROW. During the testimony of his second witness, counsel moved to strike any testimony relative to the alleged offenses since there were no entries of the incidents in question in the ship's log book as provided for by 46 U.S.C. 702. The Examiner denied the motion because he did not feel there had been any infringement of the statutory purpose which was to prevent trumped up charges from being brought at the end of a voyage.

During the course of the hearing, a total of twelve witnesses were called by each party and attempts were made by both the Investigating Officer and counsel for Appellants to impeach the testimony of opposing witnesses by the use of statements made by the witnesses during the pre-hearing investigation by the Investigating Officer. The twelve witnesses produced by counsel were all persons charged herein. A considerable amount of documentary evidence was introduced by counsel for the seamen and the Investigating Officer. Numerous objections to the admissibility of such documents were overruled by the Examiner.

After the parties had completed their closing arguments, it was agreed that no proposed findings or conclusions would be submitted to the Examiner.

On 25 May, 1949, the Examiner found the two specifications pertaining to the Manila incident "not proved" and read his decision in that case.

He then rendered his decision on the charge and two specifications relating to the activities of the crew at Singapore on 17 January, 1949. The charge and both specifications having been found "proved" as to all twenty-three Appellants, the Examiner ordered all the documents of twenty of the seamen suspended for a period of four months on twelve months' probation from 25 May, 1949. Because of their prior disciplinary records, the documents of Beynon, Delgado and Eldridge were suspended outright for two months plus two months' suspension on twelve months' probation.

The hearing was reconvened on 10 June, 1949, for the purpose of delivering to counsel copies of the decisions for each of the persons charged. The Examiner stated that the original decision in each case had been sent by registered mail to the persons charged.

Based upon a careful study of the Record including much confused and conflicting testimony and the disputed documentary evidence, I have arrived at the following findings which seem to be established despite considerable doubt as to the status of many of the surrounding circumstances.

FINDINGS OF FACT

On a foreign voyage commencing in September, 1948, and terminating in April, 1949, each Appellant was serving as a member of the crew of the American SS FLYING ARROW and acting under authority of his above described merchant mariner's document or certificate of service.

On or about 1 January, 1949, while the FLYING ARROW was at Hongkong, China, members of the crew held a meeting aboard the ship as a result of which they made a protest to the American Consul at Hongkong about the conduct of Second Assistant Engineer Jean A. Brown and other officers aboard the vessel. The Consul advised the crew to put their complaints in writing and submit them to the Consul at Manila. A list of complaints dated 5 January, 1949, was drawn up and signed by approximately half of the members of the crew but it was not presented by the crew to the American Consul at Manila or elsewhere.

On 5 January, the FLYING ARROW arrived at Manila and remained there until 7 January. Her estimated time of departure was 2400 on 6 January and notice was posted stating that shore leave would expire at 2300 on that date. None of the crew members attempted to see the Consul on either 5 or 6 January.

At approximately 1800 on 6 January, the ship's union delegated, David Beynon, and another member of the engineering department of the ship, Angel Pastor, engaged in a fight aboard the FLYING ARROW. The participants were taken to the police station for an investigation of the fight.

About twenty of the persons charged herein appeared at the police station as witnesses against Pastor. Later, the Master of the FLYING ARROW and Second Assistant Engineer Brown arrived at the police station. Brown vehemently defended Pastor and threateningly offered to fight the other members of the crew. The persons charged who were present then refused to return to the ship with Brown and Pastor aboard and they obtained the consent of the Master to take the matter to the Manila Consul. The Master of the FLYING ARROW. Captain Luker, had agreed to this course of action after he had failed, in his capacity as Master of the ship, to control the situation. The evidence throughout the record conclusively establishes the fact that Captain Luker was unable to handle the crew competently.

After the scene at the police station had nearly become a riot and the crew had been ejected, Captain Luker and Johnston, a representative of the Manila ship's agent, went to the American Embassy for help in getting the men to return aboard the vessel. This was at 0200 on 7 January and the FLYING ARROW was required to leave her berth by 0600 on this date to make room for another vessel scheduled to arrive. It was decided by Luker and Vice Consul Rhoades that a conference should be held at 0800 on 7 January after the FLYING ARROW had been moved to the outer harbor. But since Appellants still refused to go aboard until Brown and Pastor were removed, Mr. Rhoades was awakened again at 0400 for a conference with the Master, the ship's agent and the ship's union delegates. All of the Appellants, except the two women, Biquely and Swader, who had gone to a hotel for the night, waited outside of the Embassy for the Consul's decision. It was reported to Vice Consul Rhoades that Brown had abused and threatened members of the crew and that they considered Brown and Pastor to be a menace to the crew's safety. At this time, Brown and Pastor were both aboard the FLYING ARROW.

After due consideration and in order to expedite the clearing of the berth where the ship was moored, Vice Consul Rhoades addressed a letter to Captain Luker stating that the two men should be removed "in the best interest of the vessel and its crew." The men and two women crew members then returned to the ship and she got underway to an anchorage berth before 0600 on 7 January, 1949. Brown and Pastor were still on board.

When Brown and Pastor refused to comply with the removal order, another conference was arranged with the Consul to be attended by Captain Luker and another ship's agent, Mr. Pepperell, but it was agreed not to discuss the matter further with the crew. The ship's agent, Johnston, remained on the ship and obtained statements from the crew concerning the actions of Brown and Pastor.

At the conference, it was decided that Pepperell should return to the vessel with Captain Luker and remove the two men, under the authority granted in Vice Consul Rhoades' letter, if the statements taken by Johnston were sufficiently strong to warrant the removal.

Pepperell went aboard the FLYING ARROW and was introduced by Captain Luker to the ship's delegates as "the man from the Consul's office" and to Brown as "the American Consul." Having examined the statements, Pepperell ordered the police to remove the two men from the ship. This was accomplished at about 1400 on 7 January and the FLYING ARROW departed from Manila at approximately 1530 on this same date after a delay of 14 hours from 0130 on 7 January, 1949, at which time the vessel had been ready for sea.

The statements made by the crew to Johnston did not portrayed Brown or Pastor as such brutal men that their presence on board would make the FLYING ARROW an unseaworthy vessel. The complaints were not of a serious enough nature to justify removal of the two men. Although there had been several threats made of serious bodily harm, none of the members of the crew had ever been appreciably physically injured by Brown or Pastor. Nevertheless, Pepperell's action gave the outward appearance that he considered the statements sufficient to exercise the authority granted to him by the American Consul and enforceable by the letter written by the Vice Consul.

At about 0830, on 8 January, 1949, Pepperell again represented himself to Brown as the American Consul and instructed Brown to proceed to the agent's office to get a plane ticket for Singapore. Brown did this but he was delayed a few days in getting his plane reservations.

On 10 January, 1949, Pepperell informed the American Consul at Manila that word had been received from Captain Luker that he anticipated serious trouble at Singapore unless Brown was reinstated in his former position when the vessel arrived at that port. This was not the truth since no such communication was ever sent by Captain Luker.

On 12 January, 1949, Pepperell again went to the American Embassy at Manila with a letter from himself addressed to Vice Consul Rhoades. This letter suggested sending a telegram (which would "be effective in restoring obedience on the SS FLYING ARROW") to Captain Luker, through the American Consulate General at Singapore, ordering the reinstatement of Brown in accordance with Luker's request and instructing him to turn Brown over to the U. S. Coast Guard at the first U. S. port. Pepperell explained that the latter clause was suggested by Captain Luker to be used as a bluff to the ship's delegates. Again, there is no evidence of the message claimed by Pepperell to have been sent by the Master. Pepperell's letter enclosed copies of the statements made by the crew against Brown and Pastor.

It is not mentioned whether these were all the statements obtained by Johnston and Pepperell from the crew of the FLYING ARROW on 7 January.

As a representative of the ship's agent, Pepperell sent a letter dated 12 January, to Captain Luker stating that Vice Consul Rhoades requested that Brown be reinstated in the capacity of Second Assistant Engineer. Pepperell inclosed in this letter a copy of a letter he sent to the crew delegates. Pepperell stated that he didn't want the crew to know that Luker had a copy of it. In the latter letter, Pepperell pretended to be making a friendly appeal to the crew to permit Brown's reinstatement. But the main theme was that drastic action would be taken against the delegates if they again refused to man the vessel. The letter states: "* * * God help the person who gets out of line. (Plain rice and dried fish once a day is one hell of a diet.)"

On 13 January, 1949, the Manila Consul sent a telegram to the American Consul General at Singapore stating that Captain Luker should be instructed to reinstate Brown and turn him over to the Coast Guard upon arrival at the first U. S. port. The Consular Report received in evidence does not indicate any basis for this action other than Pepperell's false representations concerning a nonexistent message from Captain Luker. This telegram was received by the American Consul General at Singapore on 14 January.

On the morning of 16 January, 1949, when the FLYING ARROW arrived at Singapore, Brown approached the vessel in a launch and advised Captain Luker that he had papers for him from the American Consul at Manila, with reference to Brown's reinstatement. Captain Luker refused to permit Brown to come aboard.

On the evening of 16 January, 1949, Captain Luker telephoned the Singapore Consulate and apparently talked with the Consul General himself. The subject of the discussion was Brown and it was determined to have a meeting at the office of the Singapore Consulate the next morning. While there is no statement in the record that the Singapore Consul informed Captain Luker at that time of the telegram with respect to Brown's reinstatement, which had been received two days earlier, it appears highly likely that, during a conversation with respect to Brown, the Singapore Consul mentioned the very important telegram which had been received from the Manila Consul General with respect to Brown's reinstatement.

At 0800 on 17 January, 1949, a sailing notice was posted on the FLYING ARROW stating that shore leave would expire at 2300 on 17 January, 1949, and that the estimated time of departure was at 2400 on that date.

At some time after 0800 on the morning of 17 January, the crew members of the FLYING ARROW, including the twenty-three Appellants, proceeded to the American Consul's office at Singapore.

Captain Luker and Brown were also present at the conference conducted by the American Consul General. At this conference, it was made known to those present that the Manila Consul had issued the order removing Brown and Pastor from the ship. The Singapore Consul stated that he had "no precise knowledge of the dispute in Manila or why the Embassy decided Mr. Brown should return to his ship." The Consul was informed by Appellants that Brown had threatened certain members of the crew with violence during the past four months and that they would not return aboard with Brown because they felt he was a danger to their safety. The Consul informed the crew that the matter had been completely adjudicated by the Embassy at Manila and presumably the complaints were not considered sufficient to keep Brown off the ship since the Manila Embassy had ordered that Brown be reinstated. The Singapore Consul took the position that since nothing had occurred between Brown and the crew since the hearing conducted by the Manila Consul, it would be improper to try Brown twice for the same offense by reopening the Manila hearings. Consequently, the Singapore Consul ordered that Brown be reinstated in accordance with the telegram from the American Consul at Manila. This conference occurred at about 1300 on 17 January, 1949. Brown attempted to board the FLYING ARROW at 1400, at which time the guards told him the Captain had ordered that Brown be shot if he attempted to go aboard.

The Consul ordered Appellants to return aboard the ship on a launch which would be ready at 2100 on 17 January, 1949. Captain Luker repeated this order to the crew while they were still at the Consul's office. This order was heard and understood by the Appellants but they remained ashore all night and agreed to refuse to return to the ship as long as Brown was aboard. Captain Luker, Brown and several other members of the crew returned to the vessel on the 2100 launch after waiting about an hour and a half for the persons charged. Except for the absence of the twenty-three crew members, the FLYING ARROW was ready for sea at 0600 on 18 January, 1949.

The results of conferences the next day did not alter the situation. The ship's delegates reaffirmed their position. On this date, 18 January, 1949, the American Consul General issued, to the crew and Master, copies of his letter stating that the law required a formal hearing for Brown's removal but "as a formal hearing has already been held at Manila, and as it covered events up to that moment, and as that hearing resulted in the Consul instructed the reinstating of Mr. Brown, I cannot retry the case or reopen it, since nothing further has happened between complaining crew members and Mr. Brown to justify it." The Appellants still refused to sail despite possible fines of $10,500 each and six months in jail for their unauthorized presence in Singapore. Efforts to discharge the men were unsuccessful since the Immigration authorities would not permit the discharge of twenty-three men in Singapore.

Captain Luker had been directed by the owners to hire men locally to fill the vacancies but he was not able to do this.

After having refused to permit Brown to come aboard at Singapore, Captain Luker had several times asked the Appellants if they would back him up in his opposition to Brown's reinstatement. On 19 January, 1949, long after all concerned had learned of the telegram from the Consul at Manila and after having been given directions by the Consul at Singapore that Brown be brought back aboard, Captain Luker told the Appellants he wanted them to back him up against Brown, and requested the Appellants to give him a letter stating that they all stood behind him in the removal of Brown. The Appellants said they would, and the Captain had a statement typed up in the office of the ship's agent at Singapore, and all the Appellants then signed it. This statement reads:

> "We, the crew of the FLYING ARROW will back the Captain, A. S. Luker, in any action he may take in the removal of Jean Brown, 2nd Assistant Engineer, from the vessel in the port of Singapore."

Thereafter Captain Luker requested the Consul General to remove Brown without prejudice. Captain Luker stated he feared there would be serious trouble if Appellants were put aboard by the police to sail with Brown. Another conference was held and attended by the Consul, Captain Luker, Brown and the officers of the ship. Brown refused to voluntarily leave the ship without prejudice and the other officers refused to return to the ship if Brown was again removed. Finally, the officers agreed to return to the ship without Brown on condition that the Consul would make a statement against the crew reprimanding them for their conduct.

Brown had been on board continuously from the time he went aboard on 17 January until he went to see the Consul on 19 January. During this period of time, the Appellants were ashore.

Following the above understanding with the officers, the American Consul General issued an order removing Brown without prejudice "in the interest of the welfare of the passengers and crew." Brown then obtained his belongings and left the ship at about 2000 on 19 January. The crew returned to the FLYING ARROW at approximately 2200 on this same date. The ship got underway on 20 January, 1949, at about 0200. A delay of forty-four hours had been caused since the vessel had been ready for sea at 0600 on 18 January, 1949, awaiting the return of the crew.

The owners of the FLYING ARROW claim that these two delays totaling fifty-eight hours caused a loss slightly in excess of $6,000 based on a computation at the rate of $2,500 per day.

Brown was repatriated at the owner's expense and arrived in New York during the latter part of January.

He had been given a copy of the Singapore Consul General's report before leaving and he discussed this matter with the Coast Guard and his attorneys several times before the FLYING ARROW arrived at New York in March, 1949.

Counsel for the seamen advances five major propositions as grounds for this appeal. These points may be summarized as follows:

I. The charges were not brought in good faith. The complaint against Appellants was originated by Brown in collaboration with the Isbrandtsen Company. There was a wilful suppression of evidence to defeat the ends of justice when the Investigating Officers failed to record any statement from Brown and ordered the reporter not to transcribe the statement taken from the Chief Engineer during the course of the investigation. The Coast Guard was influenced and dominated by the Isbrandtsen Company throughout the hearing.

II. The specifications and charges are so vague and defective that they violate the Constitutional guarantees of the Appellants. The specifications are not definite enough to inform Appellants as to the specific conduct which constituted their refusal to proceed to sea. These proceedings are penal rather than remedial in nature and, therefore, the conduct sought to be punished must be clearly defined in order to enable presumptively innocent men to prepare for trial.

III. The charges must be dismissed as a matter of law. The Singapore Consul refused to hold a hearing on the merits due to the misrepresentations of the Isbrandtsen representatives. There is statutory authority (46 U.S.C. 653, 656, 685) which justified the presentation of complaints to the Consul and which required the Consul to conduct proceedings to examine into the cause of the complaints and to determine their justification.

IV. There is no credible evidence in the record to support the fact findings of the Examiner. The Examiner erred in rejecting the Appellants' testimony and in entering upon a presumption that Appellants were guilty until proven innocent rather than requiring the Government to prove its case beyond a reasonable doubt. The testimony of Captain Luker and Chief Engineer Behan conclusively corroborates the testimony of the Appellants as to Brown's brutal conduct while the credibility of testimony which was favorable to Brown was successfully impeached.

V. Appellants did not receive a fair trial. All of the generally accepted rules of procedure were violated by both the Investigating Officers and the Examiner. Appellants were not allowed sufficient time to prepare for trial; the rules of discovery were abused by failure to disclose statements taken by the Investigating Officers; the Examiner acted as a prosecutor rather than as an impartial judge with an open mind; and the case was indirectly prosecuted by the Isbrandtsen Company.

APPEARANCES: Herman E. Cooper, Esq., of New York City, by Abraham E. Freedman, Samuel Leigh, and Bernard Rolnich, of Counsel.

OPINION

In view of the disposition to be made of this case, there is no need to discuss in detail the numerous points raised by Appellants in this appeal. It will suffice to observe that I do not think there is any material merit to the Appellants' contentions; notably, that these proceedings were instituted by the Coast Guard in bad faith; and that the specifications are too vague and indefinite to permit adequate defense preparations; and that Appellants did not receive a fair and impartial trial. These are remedial proceedings which do not require proof beyond a reasonable doubt nor conformance with the niceties of wording demanded in a criminal indictment.

Although the two specifications pertaining to the Manila incident were dismissed by the Examiner, my findings of fact have gone into some detail concerning events which occurred prior to the time of the arrival of the FLYING ARROW at Singapore because such events have a direct bearing upon my decision of this case.

I do not question the conclusion of the Examiner that Brown's conduct was not such as to impair the proper operation of the vessel. But I believe that certain significant findings and conclusions were not given the consideration they deserved.

My appraisal of this case is that the whole difficulty stems from a combination of weakness and indecision on the part of the Master, particularly at Singapore, which gave the crew the impression that he was wholeheartedly with them in their objections to Brown's reinstatement and tended to significantly mislead the crew, together with the bad faith of the owner's representatives at Manila, and a sequence of misinformation to, and misunderstandings by, the American consular representatives at Manila and Singapore.

My predecessors in the administration of the law under which these proceedings are conducted have consistently held that merchant seamen under articles cannot presume to take the law in their own hands for settlement of their problems without invoking the legal remedies which Congress has provided for their protection and relief.

Nothing in this decision is to be in any manner construed as in conflict with that principle, or as holding that the conduct of these Appellants conformed to those necessary standards. However, so strong a color of justification was created in the minds of the Appellants by certain of the occurrences herein, particularly the actions of the Master at Singapore, the conduct of the ship's agents at Manila, and the decision of the American Consul at Manila, that I am impelled to the conclusion that the charges herein must be dismissed:

(1) The decision of the American Consul at Manila, after an investigation performed for him by the ship's agents, that Brown should be removed from the ship, gave Appellants some grounds for thinking themselves justified in demanding Brown's removal at Singapore;

(2) The dispatch from the Manila Embassy ordering Brown's reinstatement was procured by the fraud of the ship's agents at Manila and in any event the effect of the Manila episode would be to add to Appellants' feeling that they were in the right in objecting to Brown's continued presence aboard ship;

(3) Brown's conduct was not such as to make the ship unseaworthy as a matter of law, but did involve some bullying which although insufficient to justify Appellants' actions, lent color to Appellants' claim when combined with the other factors cited here;

(4) Central to these charges and specifications is the contention that the Appellants did not abide by the proper disciplinary standards as between Master and crew. The record indicates that at various points the Master himself suggested and led the opposition by the Appellants to Brown's presence on board the ship. In effect the Appellants were led to think they were right, not only by the actions of the ship's agents and the American Consul at Manila, but by the actions of the Master himself at Singapore. Thus (a) Captain Luker ordered violence against Brown, if Brown sought to come aboard at Singapore; (b) Luker urged the Appellants to back him up in opposing Brown's reinstatement; (c) Luker requested a statement from Appellants to that effect; and (d) had it typed up for them in the office of the ship's agent at Singapore.

The record prepared in this case does not commend itself as an example of propriety in the handling of proceedings of this kind. There was undoubtedly a high tension between the witnesses called by the Investigating Officers and these Appellants. It has been the constant hope of the Coast Guard that these proceedings would be conducted with dignity and decorum on the part of all active participants; but those virtues were signally absent at many stages in the course of the hearing.

CONCLUSION

The conduct of 2nd Assistant Engineer Brown clearly was not such as to render the vessel unseaworthy nor was it such as to justify Appellants in their refusal to sail from Singapore with Brown aboard. This decision is not to be construed as condonation of the action of the Appellants for they were the prime movers in a wrongful course of conduct.

However, the antecedent and surrounding circumstances, including the fraudulent conduct of the ship-owner's representative at Manila, the original decision of the American Consul at Manila, and particularly the actions of the Master at Singapore in leading the opposition to Brown's reinstatement by threatening Brown with violence and by soliciting Appellants' support after the Consul at Singapore had directed Brown's reinstatement, were such as to create a color of justification for the Appellants' conduct which requires the dismissal of these charges. Without such antecedent and surrounding circumstances, I would unhesitatingly affirm the Examiner's order.

ORDER

The orders of the Examiner dated 25 March, 1949, are SET ASIDE, VACATED and REVERSED.

MERLIN C. NEILL
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 4th day of February, 1952.